AMCO Insurance Company, a subsidiary of Allied Group Insurance, Appellant, vs. Jason P. Stout, Respondent, Andrew P. Pangrac, et al., Defendants (C6-98-2189).

C6-98-2189, C6-98-2404

COURT OF APPEALS OF MINNESOTA

1999 Minn. App.

September 14, 1999, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

PRIOR HISTORY: Wadena County District Court. File No. C4-97-179. Hon. Timothy J. Boland.

DISPOSITION: Affirmed.

COUNSEL: George C. Hottinger, Erstad & Riemer, Minneapolis, MN (for appellant).

Steven R. Peloquin, New York Mills, MN (for respondent).

JUDGES: Considered and decided by Anderson, Presiding Judge, Toussaint, Chief Judge, and Schultz, Judge. *

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. Art. VI, § 10.

OPINION BY: ANDERSON

OPINION

UNPUBLISHED OPINION

ANDERSON, Judge

In an insurance dispute concerning both no-fault and liability coverage, appellant challenges the district court's (1) summary judgment in favor of respondent's claim for no-fault benefits, (2) denial of appellant's motion for judgment notwithstanding the verdict, and (3) denial of new trial motion. Because appellant is not entitled to relief as a matter of law, we affirm.

FACTS

This case began as a declaratory judgment action regarding insurance coverage. Appellant AMCO Insurance Company [*2] initiated this action to determine the rights and liabilities for injuries respondent Jason Stout suffered when hit by an automobile insured by appellant and driven by defendant Andrew Pangrac (defendant).

The accident in this case occurred on the morning of July 4, 1993. After finishing work, defendant went to a bar and drank until he admittedly was "intoxicated." Defendant was driving a vehicle owned and insured by, a second defendant, Keith Radniecki. Later, at a gas station, defendant entered into an argument with one of respondent's friends. Respondent broke up this argument. Shortly after, in the parking lot, the parties continued to argue. In response to a challenge by defendant, respondent left the car he was riding in and approached defendant's vehicle.

As respondent walked in front of defendant's car, defendant accelerated forward and struck respondent. Respondent's legs were crushed between a metal guardrail and defendant's vehicle. Defendant then left the scene. Defendant was later arrested and charged with second-degree assault, third-degree assault, criminal vehicular injury, and failure to stop and report an accident. Defendant pleaded guilty to criminal vehicular [*3] injury and the other charges were dropped. Defendant was sentenced to 19 months in prison.

Prior to trial, appellant brought a summary judgment motion disputing both no-fault and liability coverage. Respondent also sought summary judgment on both coverage claims. The district court denied appellant's motion on both issues and granted summary judgment in favor of respondent on the no-fault coverage issue. After a two-day trial, the jury returned a verdict finding that defendant had not intended to injure respondent. As a result, the court denied appellant declaratory relief and

ordered it to provide both no-fault and liability coverage for respondent's injuries.

After trial, appellant sought both judgment notwithstanding the verdict and a new trial. The district court denied both motions, noting that the court had already rejected identical arguments in appellant's summary judgment motion and in response to jury-instruction objections at trial. Appellant challenges the district court's order and judgment and argues on appeal that defendant's act, as a matter of law, requires denial of both no-fault and liability coverage.

DECISION

No-Fault Coverage

Appellant first [*4] challenges the district court's decision to grant respondent's summary judgment motion for no-fault benefits. On appeal from summary judgment, a reviewing court must determine whether the district court erred in its application of the law and whether there are any genuine issues of material fact. ***State by Cooper v. French***, *460 N.W.2d 2, 4 (Minn. 1990)*. On established facts, "insurance coverage issues are questions of law for the court." ***State Farm Ins. Cos. v. Seefeld***, *481 N.W.2d 62, 64 (Minn. 1992)* (citation omitted). Yet, a reviewing court views the evidence in the light most favorable to the party against whom judgment was granted. ***Fabio v. Bellomo***, *504 N.W.2d 758, 761 (Minn. 1993)*.

The first issue in this case concerns the application of the Minnesota No-Fault Act's provision for basic economic-loss benefits for injuries arising from the maintenance or use of a motor vehicle under *Minn. Stat. § 65B.44, subd. 1* (1998). "The construction or interpretation of a statute is a question of law and is reviewed without deference to the lower courts." ***Metropolitan Property & Cas. Ins. Co. v. Metropolitan Transit Comm'n***, *538 N.W.2d 692, 695 (Minn. 1995)*. [*5]

"Maintenance or use of a motor vehicle" is defined at *Minn. Stat. § 65B.43, subd. 3* (1998), to mean "maintenance or use of a motor vehicle as a vehicle, including, incident to its maintenance or use as a vehicle, occupying, entering into, and alighting from it." In ***Continental W. Ins. Co. v. Klug***, *415 N.W.2d 876, 878 (Minn. 1987)*, the supreme court created a three-part test to determine whether an accident arises out of the use or maintenance of a motor vehicle: (1) there must be adequate causation between the automobile and the injury; (2) there must not be an act of independent significance which breaks the causal link between the use and the injury inflicted; and (3) the vehicle must have been used for a transportation purpose.

Appellant contests only the third prong of the ***Klug*** test. We reject appellant's argument that at the time of the accident defendant was using the vehicle as a weapon, not a mode of transportation.

We agree with respondent's contention that he was injured because the vehicle was being driven. This court recently reiterated that the third factor is satisfied by a "causal connection between the injury and a *transportation* [*6] use of the vehicle." ***Norwest Bank Minn., N.A. v. State Farm Mut. Auto Ins. Co.***, *580 N.W.2d 499, 502 (Minn. App. 1998)* (citation omitted), ***reversed on other grounds***, *588 N.W.2d 743* (Minn. Feb. 11, 1999). Our decision relies on the fact that if defendant had not been driving the vehicle, respondent's injuries would not have occurred.

We agree with the district court that our previous holding in ***Wilson v. State Farm Mut. Auto Ins. Co.***, *451 N.W.2d 216 (Minn. App. 1990)*, ***review denied*** (Minn. Mar. 22, 1990), is instructive. In ***Wilson***, we concluded that that the intentional act of running over and killing an individual with a motor vehicle nevertheless qualified as a transportation purpose because the vehicle was used as a "means to maneuver into a position to injure" the decedent. ***Id.*** *at 219*.

We also note that defendant's act of striking respondent was integrated into his use of transporting himself away from the scene of the altercation. Like ***Wilson***, defendant had to use the motor vehicle as a vehicle before it became a weapon. Yet, despite appellant's argument, [*7] in neither ***Wilson*** nor here can a moment in time be identified where the vehicle was no longer used for a transportation purpose.

Despite defendant's use of his vehicle to defend himself, we conclude that the vehicle was employed for its intended use. Appellant could not have injured appellant unless he employed the vehicle for this use -- as a motorized, moving vehicle. ***See*** *Minn. Stat. § 65B.43, subd. 3* (defining "maintenance or use of a motor vehicle" for no-fault purposes).

Appellant's insurance contract provided coverage for bodily injury resulting from an accident. For no-fault purposes, the term "accident" is understood from the perspective of the injured victim. ***McIntosh v. State Farm Mut. Auto. Ins. Co.***, *488 N.W.2d 476, 480 (Minn. 1992)*. Not only is defendant's intent irrelevant, but also to place the driver's intent at issue defeats the remedial purpose and effect of the no-fault statutes.

Liability Coverage

The second issue on appeal arises from the district court's denial of appellant's motion for judgment notwithstanding the verdict raised after the jury returned a verdict in favor of respondent. Generally, jury verdicts [*8] will not be set aside unless "'manifestly and palpa-

bly contrary to the evidence viewed as a whole and in the light most favorable to the verdict.'" ***Roemer v. Martin***, *440 N.W.2d 122, 124 (Minn. 1989)* (citation omitted). In review of appellant's JNOV motion, "we must affirm if there is any competent evidence reasonably tending to sustain the verdict." ***Rettman v. City of Litchfield***, *354 N.W.2d 426, 429 (Minn. 1984)* (citation omitted).

Appellant raises a legal challenge to the award of liability coverage, arguing that coverage should be denied as a matter of law. The supreme court has explained that courts may rely on reason and common sense to infer from the very nature of an act an intent to injure as a matter of law. ***American Family Mut. Ins. Co. v. Peterson***, *405 N.W.2d 418, 420-21 (Minn. 1987)*. Appellant's argument does not challenge the jury's findings, but requests this court to infer from defendant's actions an intent to injure. However, neither the evidence nor case law supports appellant's argument.

Appellant's insurance policy provided coverage for "bodily injury," unless such injury was caused intentionally. [*9] Such intentional-act exclusions do not apply when the bodily injury was not intended. ***See, e.g., Caspersen v. Webber***, *298 Minn. 93, 98, 213 N.W.2d 327, 330 (1973)*. The jury found that defendant did not intend to injure respondent, and thus the court ruled in favor of coverage.

Yet, courts have been willing to infer intent to injure when the character of the act so demands. ***See, e.g., id.*** Generally, courts have inferred such intent as a matter of law when the acts are so calculated and remorseless as to demand such an inference. ***See Continental W. Ins. Co. v. Toal***, *309 Minn. 169, 177-78, 244 N.W.2d 121, 126 (1976)* (inferring intent to injure from committing robbery, knowing that someone might be hurt or killed when accompanied by an intentional preparation to inflict serious injury by carrying loaded guns); ***see also Peterson***, *405 N.W.2d at 422* (ruling that assailant's assault satisfied wanton and malicious standard when he struck the victim on the head with a hammer without provocation).

In contrast, courts have denied the application of intentional-act exclusions where the actions have been reflexive [*10] or in self-defense. ***See, e.g., Western Fire Ins. Co. v. Persons***, *393 N.W.2d 234, 238 (Minn. App. 1986)*. Noting that the inference of intent relies on the actor's level of free will, the supreme court has further explained that "instinctual, reflexive or otherwise involuntary actions do not evidence the malign animus that points to an intent to cause bodily injury." ***State Farm Fire & Cas. Co. v. Wicka***, *474 N.W.2d 324, 330 (Minn. 1991)*.

We reject inferring such intent into defendant's reflexive act. Defendant's act does not rise to the level of the armed robbers in ***Toal*** or the hammer-swinging drunk in ***Peterson***. We cannot conclude, as a matter of law, that defendant intended to injure respondent.

Motion for New Trial

The final issue on appeal concerns appellant's rejected new trial motion. "Ordinarily, the decision to grant a new trial does lie within the sound discretion of the trial court and will not be disturbed absent a clear abuse of that discretion." ***Halla Nursery v. Baumann-Furrie & Co.***, *454 N.W.2d 905, 910 (Minn. 1990)* (citation omitted). "On appeal from a denial of a motion [*11] for a new trial, the verdict must stand unless it is manifestly and palpably contrary to the evidence, viewed in the light most favorable to the verdict." ***ZumBerge v. Northern States Power Co.***, *481 N.W.2d 103, 110 (Minn. App. 1992)*, ***review denied*** (Minn. Apr. 29, 1992) (citation omitted).

Appellant presents two arguments in support of its motion for a new trial, challenging (1) the trial court's jury instructions and (2) improper conduct of respondent's counsel. We reject both arguments because appellant fails to demonstrate that the district court abused its discretion.

First, appellant's challenge to the trial court's jury instructions misapplies the law. Trial courts are allowed considerable latitude in selecting the language in jury instructions. ***Alholm v. Wilt***, *394 N.W.2d 488, 490 (Minn. 1986)*.

The trial court correctly described the law regarding intent to the jury, asking it to consider both actual and inferred intent. Further, the trial court was well within its power to employ a special-verdict form, and case law supports the additional self-defense question. ***See Cox v. Crown CoCo, Inc.***, *544 N.W.2d 490, 499 (Minn. App. 1996)* [*12] (noting trial court's discretion in wording special verdict forms); ***Persons***, *393 N.W.2d at 237* (supporting self-defense instruction). Finally, not only did appellant fail to object to the district court's supposed explanation to the jury as to the effect of its findings, but also we are unable to find any reference in the record of any objectionable statement made by the court. ***See*** Minn. R. Civ. P. 49.01(a) (prohibiting a court from informing the jury "of the effect of its answers on the outcome of the case"); ***see also Cox***, *544 N.W.2d at 499* (explaining that such error must be accompanied by a "contemporaneous objection to improper remarks and a request for curative instructions are prerequisites to receiving a new trial on appeal") (citation omitted).

Second, we reject appellant's request for a new trial based on improper conduct by respondent's counsel. Respondent's counsel had asked the jury to place themselves in the position of defendant, referred to defendant's intoxication, and interjected his own personal

opinions. The Minnesota Supreme Court has long held that a new trial for prejudicial conduct or argument [*13] "is granted only to prevent a miscarriage of justice and that whether a new trial is to be granted rests in the discretion of the trial court whose decision will be reversed upon appeal only for a clear abuse of that discretion." ***Meagher v. Kavli**, 256 Minn. 54, 62, 97 N.W.2d 370, 376 (Minn. 1959)* (citation omitted); ***see also Sather v. Snedigar**, 372 N.W.2d 836, 839 (Minn. App. 1985)* (new trial warranted only if misconduct of counsel "clearly resulted in prejudice"). Moreover, this court has explained that the purpose of awarding a new trial due to improper arguments by counsel is "not to punish counsel, but to cure prejudice." ***Sather**, 372 N.W.2d at 839* (citation omitted).

We agree with the district court that, even if respondent's counsel stepped over the line, counsel's actions do not rise to the level of prejudice requiring a new trial. ***See id.*** In deciding whether prejudice occurred, conflicting testimony is not the focus but rather courts must focus on whether ample evidence supports the jury's verdict. ***Id.*** Ample evidence supported the jury's verdict, regardless of the actions of respondent's [*14] counsel. Moreover, appellant failed to timely object at the moment of respondent's errant remarks. ***See Hake v. Soo Line Ry. Co.**, 258 N.W.2d 576, 582 (Minn. 1977)*; ***see also Quill v. Trans World Airlines, Inc.**, 361 N.W.2d 438, 446 (Minn. App. 1985)* (requiring proper objection), ***review denied*** (Minn. Apr. 18, 1985).

Affirmed.